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**NOTE**

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From:	Presidency
To:	Council
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No. Cion doc.:	6152/13 DROIPEN 11 JAI 81 ECOFIN 92 UEM 18 GAF 18 CODEC 2131
Subject:	Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law <b>[First reading]</b> - State of play

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The Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law to the European Parliament and the Council was submitted by the Commission on 11 July 2012. On 6 June 2013, the Council (Justice and Home Affairs) adopted a general approach on the proposal<sup>1</sup>.

The European Parliament voted its report containing amendments on the proposal on 16 April 2014.<sup>2</sup> The then incoming Italian Presidency thereby immediately started formal and informal preparations for the negotiations with Parliament. Following these preparations, two technical meetings and two political trilogues have been held in October and November 2014.

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<sup>1</sup> 10729/13 DROIPEN 75 JAI 478 GAF 30 FIN 328 CADREFIN 137 CODEC 1394.

<sup>2</sup> 9024/14 CODEC 1124 DROIPEN 56 JAI 237 GAF 25 FIN 315 CADREFIN 70 PE 296.

The meetings have been held in a cooperative atmosphere and important progress has been made. However, a few substantive issues remain open, in particular:

- Exclusion of VAT-fraud from the scope of the Directive (Article 2);
- The definition of fraud (Article 3);
- The inclusion or not of a specific offence of public procurement fraud in the Directive (Article 4);
- The level of sanctions provided and the definition of serious offences (Article 7);
- The prescription provision (Article 12).

It is the assessment of the Presidency that there are good possibilities to reach agreements on most of these issues within a relatively near future.

The Presidency would draw the attention of ministers to one particular issue which raises particular difficulties in the negotiations, namely the exclusion of revenues arising from VAT from the scope of the Directive. The European Parliament, with the support of the Commission, opposes the Council General Approach on this point and strongly insist on the inclusion of related offences in the scope of the Directive. The issue has been discussed at length in the competent Council Working Party and between the institutions, but no possible solution or basis for compromise has so far been identified. There is a risk that the adoption of this important Directive may therefore be considerably delayed. The Presidency invites Ministers to encourage a deepened reflection in their Member States on possible solutions to this issue.